

DOHERTY GEORGESON KERLEY LLP  
999 Fifth Avenue, Suite 400  
San Rafael, CA 94901  
(415) 453-2300

ADAMONT N. GEORGESON (57087)  
J. EDWARD KERLEY (175695)  
DOHERTY GEORGESON KERLEY LLP  
999 Fifth Avenue, Suite 400  
San Rafael, CA 94901  
(415) 453-2300  
(415) 455-0270 Facsimile

Attorneys for Plaintiffs

EDMUND G. BROWN, JR.  
Attorney General of the State of California  
CHRISTOPHER E. KRUEGER  
Senior Assistant Attorney General  
STEPHEN P. ACQUISTO  
Supervising Deputy Attorney General  
ROSS C. MOODY, State Bar No. 142541  
Deputy Attorney General

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN PETTITT, MURPHY LABRADOR )  
CORPORATION, MAX GSD TRUST OF )  
1998 BY BARBARA MUSSER, )  
TRUSTEE, )

Plaintiffs,

v.

JOHN CHIANG, individually and in his  
capacity as STATE CONTROLLER OF  
THE STATE OF CALIFORNIA,

Defendant.

Case No.: CO 705854 CW

JOINT CASE MANAGEMENT  
STATEMENT

Date: April 1, 2008  
Time: 2:00p.m.

**1. Jurisdiction and Service**

Plaintiffs assert that this Court has jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331, and 1343, and for an action arising under the "Takings Clause" of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment, and the Contract Clause of Article 1, Section 10 of the United States Constitution. Defendant challenges jurisdiction on the grounds of the Eleventh Amendment to the United States

Case No. CV 07-5854 CW

JOINT CASE MANAGEMENT STATEMENT

1 Constitution. Venue is proper in this Court because the Defendant's conduct and other  
2 events occurred in this judicial district. All necessary parties have been served.

3 **2. Facts**

4 Since approximately December of 1998, Plaintiff John Pettitt through Plaintiff  
5 Murphy Labrador Corporation ("MLC"), the holding entity for Plaintiff MAX GSD Trust  
6 of 1998 (the "Trust"), has held shares of CyberSource Corporation ("CYBS") in the Trust  
7 for his intended beneficiaries. Sometime during 1999, all of the shares of CYBS,  
8 including Plaintiffs' original 200,000 shares, went through a reverse split and became  
9 100,000 shares of stock, which certificate was issued to MLC and held in trust.

10 Plaintiffs allege that on or around March 3, 2004, Defendant caused CYBS,  
11 through its Stock Transfer Company (American Stock Transfer Corporation of New  
12 York, New York ("AST")) to cancel the outstanding certificate and issue a replacement  
13 certificate, which it then forwarded to the California State Controller. Defendant  
14 contends that the escheatment of the shares occurred through ordinary and lawful  
15 processes pursuant to the California Code of Civil Procedure. There is some confusion  
16 about the date of surrender and sale, since AST reported that the shares had been  
17 transferred as "unclaimed funds" on March 3, 2004; however, the Controller's records  
18 received by Plaintiffs indicate that the "Date RCD", which Plaintiffs assume means the  
19 date received by the California State Controller, was reported as "10/05/04".

20 In April of 2006, Plaintiff John Pettitt was contacted by a representative of a  
21 search entity informing Mr. Pettitt that the shares of CYBS had been escheated. On May  
22 17, 2006, Plaintiff John Pettitt, as the principal officer of MLC, made a claim to  
23 Defendant for the return of the share certificates of CYBS. After the State Controller's  
24 waiting period, Plaintiffs learned that the stock certificate would not be returned, and on  
25 March 6, 2007, Defendant issued its check No. 60-142935 in the amount of \$663,000 to  
26 MLC in care of John Pettitt. The check stub indicated that the stock had been sold on  
27 December 17, 2004 at \$6.63 per share. Plaintiffs thereafter brought this action in  
28



1 November of 2007.

2 **3. Legal Issues**

3 Plaintiffs claim that Defendant failed to comply with California Code of Civil  
4 Procedure §1300, the state's Unclaimed Property Law, and in his practices, violated  
5 federal constitutional due process requirements. Defendant has filed a motion to dismiss  
6 raising two grounds (1) the statute of limitations bars recovery and (2) the Eleventh  
7 Amendment of the U.S. Constitution prevents Plaintiffs from making a monetary claim in  
8 federal court against a state official. Plaintiffs respond that (1) the statute of limitations  
9 should be equitably tolled and (2) that the Eleventh Amendment does not apply because  
10 Defendant's act was an *ultra vires*, and Plaintiffs seek the return of their property, to-wit  
11 the seized share certificate for 100,000 shares of CYBS, which is prospective relief, not  
12 money damages from the state.

13 **4. Motions.**

14 In response to the initial complaint, Defendant filed a Motion to Dismiss or for  
15 More Definite Statement. In response, Plaintiffs filed a First Amended Complaint, and  
16 the motion was declared moot.

17 Plaintiff's motion to dismiss the First Amended Complaint is set for hearing on  
18 April 24, 2008 at 2 p.m.

19 **5. Amendment of Pleadings**

20 Plaintiffs filed a First Amended Complaint, adding no new party, on February 22,  
21 2008.

22 **6. Evidence Preservation**

23 Plaintiffs have undertaken all measures to preserve evidence. Plaintiffs believe  
24 that Defendant has disposed of Plaintiffs' share certificate for 100,000 shares of CYBS  
25 Stock. Defendant is still in the process of searching for all relevant documents.

26 **7. Disclosures.**

1 Plaintiffs and Defendant have had a discussion concerning initial disclosures.  
 2 Defendant believes that the exchange of documents should be delayed until the motion to  
 3 dismiss is heard and decided.

4 **8. Discovery**

5 On March 13, 2008, Plaintiffs served Request for Production of Documents, Set  
 6 One, on Defendant. The document request calls for a production on April 23, 2008.  
 7 Defendant believes that the document production should be delayed until after the motion  
 8 to dismiss is heard on April 24, 2008. Plaintiffs do not wish to delay the production, as  
 9 they will need access to the requested documents if the Court should require that  
 10 Plaintiffs allege additional facts in support of their claims.

11 **9. Class Action** - Not Applicable.

12 **10. Related Cases** - Not Applicable.

13 **11. Relief**.

14 Plaintiffs contend that they seek the return of the stock certificate for 100,000  
 15 shares of CyberSource Corporation, which has a current value of \$1,734,000, an amount  
 16 \$1,071,000 higher than Defendant paid to Plaintiffs after selling the stock. Defendant  
 17 notes the shares of CYBS previously owned by Plaintiffs have been sold, and therefore  
 18 the shares cannot be returned. In addition, Defendant observes that Plaintiffs have  
 19 already received a settlement check for \$664,000 from the State for the shares of CYBS  
 20 at issue, and that the First Amended Complaint requests over \$1 million in monetary  
 21 damages.

22 **12. Settlement and ADR:**

23 Settlement and ADR attorneys for the parties have discussed the likelihood of  
 24 ADR. Although Defendant is unlikely to be willing or able to fund a settlement in excess  
 25 of \$1,000,000 to Plaintiffs, Plaintiffs believe ADR may assist in clarifying positions and  
 26 finding a way to make Plaintiffs whole.

27 **13. Consent to Magistrate Judge For All Purposes:**



DOHERTY GEORGESON KERLEY LLP  
999 Fifth Avenue, Suite 400  
San Rafael, CA 94901  
(415) 453-2300

Plaintiffs do not consent to a Magistrate/Judge.

**14. Other References:**

The case is not suitable to refer to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation because it is a complex case with significant damages.

**15. Narrowing of Issues:**

Not known at this time.

**16. Expedited Schedule:**

This case can be handled on an expedited basis with streamlined procedures.

**17. Scheduling:**

Completion of normal discovery, July, 2008. Designation of experts, September, 2008. Hearing on dispositive motions, September, 2008. Pre-trial conference, October, 2008. Trial, November/December, 2008.

**18. Trial:**


Plaintiffs have demanded a jury trial and expect a five or six day trial.

**19. Disclosure of Non-party Interested Entities or Persons:**

There are no such interested entities or persons known.


March 24, 2008, at San Rafael, California.

DOHERTY GEORGESON KERLEY LLP

  
By: ADAMONT N. GEORGESON,  
Attorney for Plaintiffs

ATTORNEY GENERAL OF THE STATE OF  
CALIFORNIA

Dated: March 25, 2008

  
By: ROSS C. MOODY,  
Attorney for Defendant